



CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1640

[Docket No. CPSC-2021-0007]

Standard for the Flammability of Upholstered Furniture

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) is proposing to codify in the Code of Federal Regulations the statutory requirements for the flammability of upholstered furniture under the COVID -19 Regulatory Relief and Work From Home Safety Act. This Act mandates that CPSC promulgate California Technical Bulletin 117-2013 as a flammability standard for upholstered furniture under section 4 of the Flammable Fabrics Act. In the “Rules and Regulations” section in this issue of the *Federal Register*, the Commission is issuing this determination as a direct final rule. If we receive no significant adverse comment in response to the direct final rule, we will not take further action on this proposed rule.

DATES: Submit comments by [Insert Date 30 Days After Date of Publication in the Federal Register].

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2021-0007, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC does not accept comments submitted by electronic mail (e-mail), except through <https://www.regulations.gov>. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/hand delivery/courier Written Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7479. Alternatively, as a temporary option during the COVID-19 pandemic, you may email such submissions to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit electronically: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2021-0007, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Andrew Lock, Project Manager, Directorate for Laboratory Sciences, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, phone: (301) 987-2099; email: alock@cpsc.gov.

SUPPLEMENTARY INFORMATION: Along with this proposed rule, CPSC is publishing a direct final rule in the “Rules and Regulations” section of this issue of the *Federal Register*. The CPSC is using the direct final rule procedure to codify in the Code of Federal Regulations (CFR), the statutory provision of the COVID-19 Regulatory Relief and Work From Home Safety Act (COVID-19 Act). Section 2101(c) of the COVID-19 Act mandates that, 180 days after the date of enactment of the COVID-19 Act, the standard for upholstered furniture set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the

Department of Consumer Affairs of the State of California in Technical Bulletin (TB) 117-2013 (TB 117-2013), entitled, “Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture,” published June 2013, “shall be considered to be a flammability standard promulgated by the Consumer Product Safety Commission under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193).” Under the direct final rule, the standard is effective June 25, 2021; however, compliance with the labeling requirement shall be required by June 25, 2022.

CPSC believes that this action is not controversial, and CPSC does not expect significant adverse comment because we are codifying statutorily mandated requirements. CPSC has explained the reasons for codifying the statutory language in the direct final rule. Unless CPSC receives significant adverse comment regarding the determination during the comment period, the direct final rule in this issue of the *Federal Register* will become effective on June 25, 2021, and CPSC will not take further action on this proposal. If CPSC receives a significant adverse comment, CPSC will publish a notice in the *Federal Register* withdrawing the direct final rule, and the rule will not take effect. CPSC will then respond to public comments in a later final rule, based on this proposed rule. CPSC does not intend to institute a second comment period on this action. Parties interested in commenting must do so at this time. For additional information, please see the direct final rule published in the “Rules and Regulations” section of this issue of the *Federal Register*.

List of Subjects in 16 CFR Part 1640

Consumer protection, Flammable materials, Incorporation by reference, Labeling, Upholstered furniture materials, Textiles.

For the reasons stated in the preamble, the Commission proposes to amend title 16 of the Code of Federal Regulations by adding part 1640 to subchapter D to read as follows:

PART 1640 – STANDARD FOR THE FLAMMABILITY OF UPHOLSTERED FURNITURE

Sec.

1640.1 Purpose and scope.

1640.2 Effective date and compliance date.

1640.3 Definitions.

1640.4 Certification and labeling.

1640.5 Requirements.

1640.6 Incorporation by reference.

Authority: Sec. 2101, Pub. L. 116-260, 15 U.S.C. 1193

§ 1640.1 Purpose and scope.

(a) *Purpose.* This part establishes the standard for the flammability of upholstered furniture, as set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin 117- 2013, entitled “Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture,” published June 2013 (for availability, see § 1640.6).

(b) *Scope.* All upholstered furniture as defined in § 1640.3 manufactured, imported, or reupholstered on or after the effective date of this standard is subject to the requirements of this part.

§ 1640.2 Effective date and compliance date.

(a) *Effective date.* This part (the standard) is effective June 25, 2021 and shall apply to all upholstered furniture, as defined in § 1640.3, manufactured, imported, or reupholstered on or after that date.

(b) *Compliance date.* Compliance with the labeling requirement in § 1640.4 shall be required by June 25, 2022, and shall apply to all upholstered furniture, as defined in § 1640.3, manufactured, imported, or reupholstered on or after that date.

§ 1640.3 Definitions.

(a) *Bedding product* means

(1) An item that is used for sleeping or sleep-related purposes; or

(2) Any component or accessory with respect to an item described in this paragraph (a), without regard to whether the component or accessory, as applicable, is used—

(i) Alone; or

(ii) Along with, or contained within, that item;

(b) *California standard* means the standard set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin 117- 2013, entitled “Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture”, published June 2013 (see § 1640.6).

(c) *Foundation* has the meaning given that term in § 1633.2 of this chapter.

(d) *Mattress* has the meaning given that term in § 1633.2 of this chapter.

(e) *Upholstered furniture.* (1) Means an article of seating furniture that—

(i) Is intended for indoor use;

(ii) Is movable or stationary;

(iii) Is constructed with an upholstered seat, back, or arm;

(iv) Is:

(A) Made or sold with a cushion or pillow, without regard to whether that cushion or pillow, as applicable, is attached or detached with respect to the article of furniture, or

(B) Stuffed or filled, or able to be stuffed or filled, in whole or in part, with any material, including a substance or material that is hidden or concealed by fabric or another covering, including a cushion or pillow belonging to, or forming a part of, the article of furniture; and

(v) Together with the structural units of the article of furniture, any filling material, and the container and covering with respect to those structural units and that filling material, can be used as a support for the body of an individual, or the limbs and feet of an individual, when the individual sits in an upright or reclining position;

(2) Includes an article of furniture that is intended for use by a child; and

(3) Does not include—

(i) A mattress;

(ii) A foundation;

(iii) Any bedding product; or

(iv) Furniture that is used exclusively for the purpose of physical fitness and exercise.

§ 1640.4 Certification and labeling.

(a) *Testing and certification.* A fabric, related material, or product to which the California standard applies shall not be subject to section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)) with respect to that standard.

(b) *Certification label.* Each manufacturer of a product that is subject to the California standard shall include the statement “Complies with U.S. CPSC requirements for upholstered furniture flammability” on a permanent label located on the product, which shall be considered to be a certification that the product complies with that standard.

§ 1640.5 Requirements.

(a) *In general.* All upholstered furniture must comply with the requirements in the California standard, Technical Bulletin (TB) 117-2013, “Requirements, Test Procedure and

Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture,” June 2013 (incorporated by reference § 1640.6).

(b) *Preemption.* Notwithstanding section 16 of the Flammable Fabrics Act (15 U.S.C. 1203) and section 231 of the Consumer Product Safety Improvement Act of 2008 (15 U.S.C. 2051 note), and except as provided in sections 1374, 1374.2, and 1374.3 of 4 California Code of Regulations (CCR) (except for subsections (b) and (c) of section 1374 of that title) (incorporated by reference § 1640.6) or the California standard, no State or any political subdivision of a State may establish or continue in effect any provision of a flammability law, regulation, code, standard, or requirement that is designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture.

(c) *Preservation of certain state law.* Nothing in Public Law 116-260 or the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*) and section 231 of the Consumer Product Safety Improvement Act of 2008 (15 U.S.C. 2051 note), may be construed to preempt or otherwise affect:

(1) Any State or local law, regulation, code, standard, or requirement that—

(i) Concerns health risks associated with upholstered furniture; and

(ii) Is not designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture;

(2) Sections 1374, 1374.2, and 1374.3 of 4 CCR (except for subsections (b) and (c) of section 1374 of that title), as in effect on the date of enactment of Public Law 116-260; or

(3) The California standard.

§ 1640.6 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at U.S. Consumer Product Safety Commission

(CPSC), Room 820, 4330 East West Highway, Bethesda, MD 20814, and is available from the other sources listed in this section. To schedule an appointment, contact CPSC's Division of the Secretariat: telephone (301) 504-7479 or email: cpsc-os@cpsc.gov. The material is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

(a) State of California, Department of Consumer Affairs, 4244 South Market Court, Suite D, Sacramento, CA 95834; email DCA@dca.ca.gov; phone (800) 952-5210; or visit https://bhgs.dca.ca.gov/about_us/tb117_2013.pdf.

(1) *California standard*. Technical Bulletin (TB) 117-2013, "Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture," June 2013; IBR approved for § 1640.5.

(2) [Reserved]

(b) State of California, Office of Administrative Law (OAL), 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339, phone 916-323-6815, email staff@oal.ca.gov; or visit <https://oal.ca.gov/publications/ccr/>; or purchase a hard-copy version (full code or individual titles) from Barclay, publisher of the Official CCR, at 1-800-888-3600.

(1) California Code of Regulations (CCR), Title 4, Sections 1374, 1374.2, and 1374.3, in effect as of February 26, 2021 Register 2021, No. 9; IBR approved for § 1640.5.

(2) [Reserved]

Alberta E. Mills,
Secretary,
Consumer Product Safety Commission.

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